



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R06-OAR-2021-0802; FRL-9401-02-R6]**

### **Air Plan Approval; Texas; Control of Air Pollution from Visible Emissions and Particulate Matter**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving the revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas to EPA on October 22, 2021. The revisions pertain to particulate matter and outdoor burning regulations. This action allows volunteer firefighters to fulfill supervision requirements for the burning of certain waste types generated from specific residential properties.

**DATES:** This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2021-0802. All documents in the docket are listed on the <https://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Randy Pitre, EPA Region 6 Office, Infrastructure and Ozone Section, 214-665-7299, [pitre.randy@epa.gov](mailto:pitre.randy@epa.gov). Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office

may be closed to the public to reduce the risk of transmitting COVID-19. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

**SUPPLEMENTARY INFORMATION:** Throughout this document “we,” “us,” and “our” means the EPA.

## **I. Background**

The background for this action is discussed in detail in our November 15, 2022, proposal (87 FR 68413). In that document, we proposed to approve revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas to EPA on October 22, 2021. The revisions allow volunteer firefighters to fulfill supervision requirements for the burning of trees, grass, leaves, branch trimmings, or other plant growth generated from specific residential properties at designated sites for consolidated burning of waste, located outside of a municipality, and within a county with a population of less than 50,000 people. We did not receive any comments regarding our proposal.

## **II. Final Action**

The EPA is approving revisions to the Texas SIP submitted by the State of Texas to EPA on October 22, 2021, that pertain to particulate matter and outdoor burning regulations. This rulemaking action is being taken under Section 110 of the CAA. Specifically, we are approving the revision to 30 TAC 111.209(5).

## **III. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference the revisions to the Texas regulations as described in Section II of this preamble, Final Action. The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this

preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated in the next update to the SIP compilation.

#### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference,  
Particulate matter.

Dated: January 30, 2023.

**Earthea Nance,**  
*Regional Administrator, Region 6.*

For the reasons stated in the preamble, the Environmental Protection Agency amends 40

CFR part 52 as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION  
PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart SS – Texas**

2. In §52.2270 (c), the table titled “EPA Approved Regulations in the Texas SIP” is amended by revising the entry for Section 111.209.

The revision reads as follows:

**§52.2270 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

**EPA APPROVED REGULATIONS IN THE TEXAS SIP**

State Citation	Title/Subject	State approval/ submittal date	EPA approval date	Explanation
* * * * *				
<b>Chapter 111 (Reg 1) – Control of Air Pollution from Visible Emissions and Particulate Matter</b>				
* * * * *				
<b>Subchapter B: Outdoor Burning</b>				
* * * * *				
Section 111.209	Exception for Disposal Fires	10/22/2021	[Insert date of publication in the <i>Federal Register</i> ], [Insert <i>Federal Register</i> citation]	
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